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SEBI likely to launch REITs today: Nishit Desai Associates

Ruchir Sinha of Nishith Desai Associates expects the Securities and Exchange Board of India to announce the formation of Real Estate Investment Trusts (REITs) today.

Speaking to CNBC-TV18, Sinha says the market regulator has been very keen to bring about an effective REIT regime.

Furthermore, on what amendments one can expect from the REITs, Sinha says the voting thresholds are likely to change.

“Currently, the REIT regime brings to the unit holders right to vote on several matters. Voting norms are currently triggered or pegged to 60-75 percent of the unit holders by value and by number, which becomes scattered. So, what we would be hoping for is that these voting norms could be limited to those present in voting and instead of value and number it could be limited to value,” he adds.

Below is the edited transcript of Sinha’s interview to CNBC-TV18.

Q: Do you think finally today we are going to hear from SEBI the final rules on REIT?

A: I think there has been tremendous keenness at the part of SEBI to bring about effective REIT regime and I think the draft REIT regulations were also announced pretty promptly. I think the indications we got from SEBI was that by the end of this year, there should be a finalised RETI regime. So, my guess is that they should be looking at that launching this formally today.

Q: What are you expecting from the SEBI meet itself, do you think that there will be any amendments to the draft guidelines that they had laid out in October?

A: A few amendments we would be expecting is in context of the fund raising by the REITs because currently what is allowed is only follow-on public offer (FPO) or an initial public offering (IPO). So, there is no provision for a rights issue or a preferential issue for fund raising by REIT.

Second important change which I would be expecting is in terms of voting thresholds. Currently, the REIT regime brings to the unit holders right to vote on several matters like the change of sponsor, change of management, principle valuers and many such things and those voting norms are currently triggered or pegged to 60-75 percent of the unit holders by value and by number, which becomes scattered. So, what we would be hoping for is that these voting norms could be limited to those present in voting and instead of value and number it could be limited to value.

The third important change which we would be hoping for is the REIT manager threshold because currently there is a five-year experience required at the manager level and also a two-year experience is required at the key employee’s level. As most of these manager or the management entities will be new, I think the experience threshold will only be pegged at the key employees level and then, there is one more important one like delisting.

Currently, unlike the global markets where REITs is a perpetual vehicle and they are terminated, currently the SEBI regulations only provide for delisting, which would in effect if you look at the current delisting norms, they would require the promoter to buyout the unit holders which is unlikely how it happens. So I think the way you should look at it is that if the unit holders want to terminate the REIT then the REIT should be terminated and delisting should be simultaneous and whatever the value of the assets are, the assets should be sold in disputant unit holders. So, those are the couple of points which I would be expecting.

Q: Do you expect any amendment in the capital gains regime because the worry for a lot of people has been the capital gains tax that they would have to pay if their assets are not allowed to be transferred to the SPV at the book value, so are you expecting any kind of adjustments there?

A: Yes, so I think tax will clearly be one of the important factors for success of the REIT regimes because unfortunately, unlike global markets where REITs would hold the real assets directly, here it would be held through SPVs. So, there would be taxation exemptions required both at the SPV level in terms of distributions and also as you said in terms of transfers when you are making a transfer to REIT, the capital gains should be exempt or at least be deferred until the time because the transfer would happen typically for the units of the REIT by the SPV.

Till that time, as the units are not sold, the capital gains should not be levied. So I think that would be clearly an expectation. I think expectations would also be in terms of notifying units of REIT as just like equity shares where you pay securities transaction tax (STT) and any amount of capital gains are exempt.

Q: Would there be any issues with stamp duty dividend distribution?

A: Exactly, so as I said typically the way in which REIT would work is that they would hold the real estate directly but since REIT can only invest in completed assets and most of these assets will be housed in SPVs. So the challenge will be that either you transfer these real assets from the SPVs to the REIT in which case there will be stamp duty implication which may range from anywhere 5-8-9 percent depending on the state where it is and if you are not transferring those assets to the REIT and if it is in the SPV then you have got multiple level of taxes because whatever income you get, there will be corporate taxes then distribution taxes.

Q: If the REIT gets implemented then which are the real estate companies that could be positively impacted?

A: One would definitely be Rahejas, which would be looking at offloading some of their reputed malls like Hypercity, InOrbit etc.

There could be DLF which would - so most of the reputed developers who are running malls or office complexes would be looking at offloading this.